

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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CLERK *Mr. Sandoz*
SO. DIST. OF GA.

KENNETH TELFAIR NEWSOME II,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. CV408-004
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 17), to which objections have been filed (Doc. 22). After a careful de novo review, the Court **DECLINES TO ADOPT** the Report and Recommendation of the Magistrate Judge and **REFERS** this Motion to the Magistrate Judge for further consideration in light of Plaintiff's subsequent filing.

Plaintiff Kenneth Telfair Newsome II filed his § 2255 Motion on January 15, 2008. (Doc. 1.) The Government motioned for, and was granted, an extension of time to reply to the Motion due to a pending appeal. (Docs. 5 & 7.) Subsequently, Plaintiff filed a Motion for Default Judgment, which was denied. (Docs. 9 & 11.) The Government filed their Response to the § 2255 Motion on July 30, 2008. (Doc. 13.)

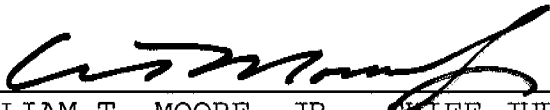
On August 22, 2008, the Magistrate Judge issued a Report and Recommendation, recommending that this Court deny the Motion

for § 2255 relief. (Doc. 18.) Three days later, a "brief in support" of the § 2255 Motion was docketed by Plaintiff. (Doc. 20.) Due to the short period of time between these filings and Plaintiff's use of the Postal Service rather than electronic filing, it is clear that Plaintiff drafted and mailed the brief without knowledge of the Report and Recommendation. Accordingly, the Court will construe the filing as a reply brief under Rule 5(d) of the Rules Governing § 2255 Proceedings for the United States District Courts. See Espey v. Wainwright, 734 F.2d 748, 749-50 (11th Cir. 1984).

In his Report and Recommendation, the Magistrate Judge relied heavily on Caderno v. United States, 256 F.3d 1213, 1217 (11th Cir. 2001), in finding that Plaintiff's initial Motion was not supported by sufficient factual allegations. (Doc. 18.) In light of Caderno, the Magistrate Judge declined to consider Plaintiff's claims under Strickland v. Washington, 466 U.S. 668 (1984). As this Report and Recommendation was docketed three days prior to the arrival of Plaintiff's Reply Brief, the Magistrate Judge did not have a chance to consider this new filing. While this Court expresses no opinion on the merits, Defendant's reply brief does contain additional arguments, which may require additional analysis. Accordingly, the Court **DECLINES TO ADOPT** the Report and Recommendation, and **REFERS** the

Motion to the Magistrate Judge for further consideration in
light of the Reply Brief.

SO ORDERED this 6th day of April, 2009.



WILLIAM T. MOORE, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA